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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,191	05/03/2007	Isabelle Bossard	15261.0003USWO	2933
23552	7590	11/19/2009		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER SIMPSON, SARAH A	
			ART UNIT	PAPER NUMBER
			3731	
			MAIL DATE	DELIVERY MODE
			11/19/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,191

**Applicant(s)**

BOSSARD ET AL.

**Examiner**

SARAH A. SIMPSON

**Art Unit**

3731

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 14-16 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-16 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/31/2009 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 21-23 and 26-28** are rejected under 35 U.S.C. 102(a) as being anticipated by **Collins (GB 2384704 A)**.

**Regarding claims 21 and 22**, Collins discloses a device for removing a composition and depilated hair from the skin, the device comprising: a non-shaving head (2); a handle (3) having a curvature profile and a broadened end distal from the non-shaving head, the curved profile defining a downward concave curvature that

extends along a majority of the length of the handle (fig. 3); and a joint (4) comprising an upwardly open V-shaped notch between the head and the handle, permitting an articulation of the head about the handle.

**Regarding claim 23**, Collins discloses the device wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

**Regarding claims 26-28**, Collins essentially discloses the device being unitary and made of plastic (page 5, lines 1-4) wherein the handle is substantially rigid, the head is substantially rigid, and the joint is the only source of articulation (page 2, lines 19-30).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claims 1-8, 14-16, 24, 25 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Collins (GB 2384704 A)** in view of **Hansen (Des. 324,912)**.

**Regarding claim 1**, Collins discloses a device for removing a composition and depilated hair from the skin, the device comprising: a non-shaving head (2) which in use is moved over the skin to effect removal of the composition (page 1, lines 3-6); a handle (3) having a curvature profile and a broadened end distal from the non-shaving head (fig. 2); and a joint (4) comprising an upwardly open notch between the head and the handle, the joint being defined by an upward opening, permitting an articulation of the head about the handle. The non-shaving handle has a downward concave curvature profile extending along a majority of the length of the handle.

Collins fails to disclose wherein the non-shaving head has a downward concave curvature profile when used to effect the removal of the composition.

However, Hansen teaches a scraper with both the non-shaving head and handle have a downward concave curvature profile when used to effect the removal of the composition, the downward concave curvature profile of the handle extending along a majority of the length of the handle (figs. 1-4).

Given the teachings of Hansen, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so would allow the user to have an improved ergonomic grip when scraping certain hard to reach areas of the body.

Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to position the non-shaving head in a downward concave profile, since it has been held that rearranging parts of an invention involves only routine skill in the art.

**Regarding claim 2**, Collins discloses the device as claimed in claim 1, wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

**Regarding claim 3**, Collins discloses the invention except for wherein the head comprises an articulation about the handle through an angle in the range of 10 to 40°.

However, Collins teaches a head comprising an articulation about the handle that appears to be an angle in the range of 10 to 40° (figs. 2-4).

Given the teachings of Collins, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins with an angle in the range of 10 to 40°. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art.

**Regarding claim 4**, Collins essentially discloses the device wherein when the force, causing articulation of the head, is reduced or removed the head is able to recover a previous or original position (page 2, lines 19-30).

**Regarding claims 5-7**, Collins essentially discloses the device being unitary and made of plastic (page 5, lines 1-4) wherein the handle is substantially rigid, the head is substantially rigid, and the joint is the only source of articulation (page 2, lines 19-30).

**Regarding claim 8**, Collins essentially discloses the invention wherein the joint is formed by a web of plastic material at the base of an upwardly open notch between the handle and the head (page 5, lines 1-4).

**Regarding claim 14**, Collins discloses a device for removing a depilatory composition and depilated entrained hair from skin, the device comprising a translucent (wherein polyethylene is translucent) integrally molded thermoplastic unit (page 5, lines 1-4), the unit consisting essentially of: a non-shaving head (2), the head comprising a planar surface comprising a flat top surface and a fiat under surface, the planar surface ending in a single straight edge ((2a); figs. 1-4); a handle (3) having a curvature profile and a broadened end distal from the head (fig. 3); and a single joint (4) between the handle and the head providing limited articulation of the head with respect to the handle. The non-shaving handle has a downward concave curvature profile extending along a majority of the length of the handle.

Collins fails to disclose wherein the non-shaving head has a downward concave curvature profile when used to effect the removal of the composition.

However, Hansen teaches a scraper with both the non-shaving head and handle have a downward concave curvature profile when used to effect the removal of the composition, the downward concave curvature profile of the handle extending along a majority of the length of the handle (figs. 1-4).

Given the teachings of Hansen, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-having head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so would allow the user to have an improved ergonomic grip when scraping certain hard to reach areas of the body. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to position the non-shaving head in a downward concave profile, since it has been held that rearranging parts of an invention involves only routine skill in the art.

**Regarding claim 15**, Collins discloses the device wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (page 6, lines 1-10; wherein the hinge and resistant material of the device provides for a resistance force that increases as the articulation increases).

**Regarding claim 16**, Collins discloses the device wherein the joint is formed by a web of plastic material at the base of an upwardly open notch between the handle and a curved surface of the head (page 5, lines 1-4).

**Regarding claim 24**, Collins discloses the invention except for wherein the head comprises an articulation about the handle through an angle in the range of 10 to 40°.

However, Collins teaches a head comprising an articulation about the handle that appears to be an angle in the range of 10 to 40° (figs. 2-4).

Given the teachings of Collins, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins with an angle in the range of 10 to 40°. It has been held that where the general conditions of a claim are



disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art.

**Regarding claim 25**, Collins essentially discloses the device wherein when the force, causing articulation of the head, is reduced or removed the head is able to recover a previous or original position (page 2, lines 19-30).

**Regarding claim 29**, Collins discloses wherein the non-shaving handle has a downward concave curvature profile extending along a majority of the length of the handle but fails to disclose wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition.

However, Hansen teaches a scraper with both the non-shaving head and handle have a downward concave curvature profile when used to effect the removal of the composition, the downward concave curvature profile of the handle extending along a majority of the length of the handle (figs. 1-4).

Given the teachings of Hansen, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Collins wherein both the non-shaving head and the handle have a concave curvature profile when used to effect the removal of the composition. Doing so would allow the user to have an improved ergonomic grip when scraping certain hard to reach areas of the body. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to position the non-shaving head in a downward concave profile, since it has been held that rearranging parts of an invention involves only routine skill in the art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-8, 14-16 and 21-29 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 21, it is noted that the claim only requires the profile of the handle to be in a downward concave curvature along a majority of the length of the handle. Thus, Collins meets this limitation as shown in Figure 3.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH A. SIMPSON whose telephone number is 571-270-3865. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah A Simpson/  
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
11/18/09